**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

SECOND APPEAL NO.593 OF 2006

Someshwar Prasadik Vividha
Karyakari Seva Sahakari
Society Ltd. .. Appellant.
Vs.
Shridhar Sitaram Dharne & Ors. .. Respondents.

Mr.A.S.Khandeparkar for the appellant.
Mr.R.G.Ketkar for respondent no.1.

**CORAM : D.B.BHOSALE,J.**
**DATE : 05/03/2007**

**PC:**

1. Heard the learned counsel for the parties.

2. This appeal by defendant no.1 is directed against the concurren judgments of the courts below by which the respondents-plaintiffs' suit for declaration and injunction stands decreed. Defendant no.1 claim right, title and interest over the property admeasurng 37-1/2 gunthas out of survey no.335 on the basis of a gift deed executed by defendant no.2 on 28.6.1979. The case set up by the plaintiffs is that defendant no.2 could not have executed the gift deed in respect of land to the extent of 37-1/2 gunthas since he had no right over more than 23 gunthas out the said survey number. In support of this contention he placed reliance upon the mutation entry no.3100 dated 6.12.1971. The said mutation entry was challenged by defendant no.2 in appeal and in the appeal it was confirmed. The order in appeal was not carried further. By this mutation entry survey no.335 was divided into two parts, namely, Pot Hissa no.33A

admeasuring 23 gunthas and 33-B admeasuring 1 acre and 5 gunthas. On the basis of this mutation entry the plaintiffs claim right over 1 acre and 5 gunthas of land out of survey no.335. Neither the mutation entry was challenged further nor did defendant no.2 filed civil proceedings claiming any right over 1 acre and 5 gunthas of land which was mutated in favour of the plaintiffs. The courts below have considered all the material in proper perspective and I find no reason to interfere with the findings of fact in extremely limited jurisdiction of this Court under section 100 of the Code of Civil Procedure to disturb the findings of fact. Mr.Khandeparkar in the course of argument submitted that the appellant-society has already constructed building on the plot which was gifted by defendant no.2 and the part of the building is likely to be affected if the decree is executed as it is. Mr.Ketkar, learned counsel for respondent no.1 - plaintiff on the other hand placed on record a map drawn by the Court Commissioner to contend that no part of the building will be affected if the decree is executed. He submitted that he has instructions to make a statement that while executing the decree the plaintiff shall not claim any part of the land on which the building is standing. His statement is accepted. The map produced by Mr.Ketkar is taken on record and keeping that in view and considering the concurrent findings recorded by the courts below this second appeal fails and dismissed as such.

(D.B.BHOSALE,J.)